

EXHIBIT A

Issue Paper 3: Gainful Employment Session 1: January 18-21, 2022

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

Issue Paper 3: Gainful Employment**Session 1: January 18-21, 2022**

Issue: Gainful Employment

Statutory cites: §101(b)(1), 102(b)(1)(A)(i), and 102(c)(1)(A) of the Higher Education Act of 1965, as amended

Regulatory cites: 34 CFR Subpart Q

Summary of issues:

The Higher Education Act (HEA) requires some programs and institutions (generally all programs at proprietary institutions and any non-degree programs at public or private nonprofit institutions) to “prepare students for gainful employment in a recognized occupation” to access Title IV federal financial aid. However, for many years the standards by which institutions could demonstrate compliance with those requirements were largely undefined. In 2011, the Department of Education (Department) conducted a rulemaking and issued a regulation that established such standards for gainful employment (GE) programs, based in part on the debt that graduates incurred in attending the program, relative to the earnings they received after completion. The regulation was reissued in 2014 following a court challenge, based on a similar debt-to-earnings structure for GE programs. When the data were first released in January 2017, over 800 programs, collectively enrolling hundreds of thousands of students, did not pass the GE standards.

In summer 2019, the Department rescinded the 2014 rule nearly in its entirety. However, the Department remains concerned about the prevalence of programs that fail to help students obtain sufficiently remunerative employment to justify the investment of their time and resources, and often leave students too deeply in debt relative to their earnings to afford to repay.

A growing body of academic research has identified persistent problems in GE programs (defined by the HEA as certificate programs and degree programs at proprietary institutions), including poor labor market outcomes, high levels of borrowing, and low loan repayment rates. For example, [research](#) has found that some postsecondary certificates have very low or even negative labor market returns for their graduates. This finding is echoed in the most recent College Scorecard data, which show that roughly 19 percent of undergraduate certificate programs have median earnings among working graduates that are less than 150 percent of the poverty line. Multiple studies [show](#) that for-profit college students, in particular, see much lower employment and earnings gains than students in programs at non-profit colleges.

Additionally, the most recently available data published via the College Scorecard show that the median cumulative loan debt of students in many programs is high relative to the amounts that students earn, especially in programs offered by proprietary institutions. For example, median cumulative borrowing levels exceed median annual earnings at about 12 percent of undergraduate degree programs (among those where data are available), or 9 percent among public and nonprofit undergraduate degree programs. Among programs at proprietary schools, however, the analogous figures are 28 percent for

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associate's and 42 percent for bachelor's degree programs. [Multiple studies](#) have found that, accounting for differences in student characteristics, borrower outcomes like repayment rates and the likelihood of default are worse in the proprietary sector. Finally, [research indicates](#) that federal accountability efforts can be effective in driving improved student outcomes, particularly for students at (or who would have attended) for-profit colleges.

We seek feedback on the overall state of the GE sector of higher education, including the greatest problems that students who enroll in GE programs currently face. We also seek feedback on the appropriate framework for the GE standards, including the metrics that should be utilized to assess programmatic outcomes; the sanctions that should be applied; and the reporting requirements that should be instituted to assess GE programs. Finally, we request feedback on the need for improved consumer information about the outcomes of institutions of higher education, as well as GE programs' failure to meet required standards, so that prospective and enrolled students are aware of those outcomes and the potential for loss of eligibility of federal financial aid.

Discussion Questions:

The Department is interested in reestablishing criteria to define how an applicable program can demonstrate it prepares students for "gainful employment in a recognized occupation," as required by the statute. The Department seeks to promulgate regulations that promote better labor market outcomes, create value for students' investments in higher education, protect students from acquiring debts they cannot afford to repay, and safeguard the interests of taxpayers.

- 1) What metric(s), and what threshold(s) (pass/fail cutoff points) in those metric(s), best distinguish between programs that prepare students for gainful employment versus those that do not, including at different credential levels? For instance, we seek feedback on the use of repayment rates; debt-to-earnings rates; earnings thresholds; and other measures.
 - a. Should the Department include non-completers in any of the metrics? How would the Department assign non-completers to programs and what metrics would be most suitable?
- 2) How should the Department address programs with low earnings outcomes, even when they might have relatively low median debt levels (and thus may have passed the 2014 gainful employment rule)?
- 3) What are the benefits of using a combination of metrics versus a single metric in considering whether a program prepares students for gainful employment in a recognized occupation? What are the pros and cons of using multiple metrics versus a single metric for this purpose?
- 4) What are the benefits of allowing institutions multiple consecutive years of failing a metric based on post-college earnings? What are the risks of allowing multiple consecutive years? What factors should the Department consider in specifying how passing and failing metrics in consecutive years are related to the trigger of sanctions?
- 5) How should the Department balance the burden of institutional reporting requirements with collecting data as detailed as was required under the 2014 gainful employment metric? For instance:

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- a. The cap of median debt at the tuition, fees, books, and supplies of the student required institutions to report that figure for each student. What was the benefit of the inclusion of that cap?
 - b. The inclusion of institutional and private loan debt required institutions to report additional debt amounts for each student. What was the benefit of the inclusion of those types of loan debt?
 - c. If the Department did not include the additional reporting of institutional and private loan debt, might institutions have an incentive to increase non-Federal borrowing? How might the Department mitigate such concerns?
- 6) How should the Department address the presence of income that is unreported to the IRS?
- 7) How should the Department address programs that are too small (i.e., that have too few students complete the program in a given year) to have their program debt or earnings information disclosed?
- 8) What metrics are most important to be disclosed to prospective and enrolled students? What are the best formats for those disclosures?
- 9) How should the Department ensure that institutions are not simply shutting down old programs and starting up new, similar programs to avoid the consequences of a GE rule?